



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/762,330

01/23/2004

Satoru Tanaka

1046.1306

4953

21171 7590 01/07/2009
STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER

LANIER, BENJAMIN E

ART UNIT

PAPER NUMBER

2432

MAIL DATE

DELIVERY MODE

01/07/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/762,330	Applicant(s) TANAKA, SATORU	
	Examiner BENJAMIN E. LANIER	Art Unit 2432	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/5/2008</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 May 2008 has been entered.

Response to Amendment

2. The declaration filed on 16 October 2008 under 37 CFR 1.131 has been considered but is ineffective to overcome the Sobel reference.

3. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Sobel reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). The claims require a determination to be made as to whether or not the virus definition files for a user apparatus are up to date. The evidence provided talks only briefly about a "predetermined interval" that a virus information server was accessed. The evidence provided does not discuss a determination being made as to whether or not the virus definition files for a user apparatus are up to date. Additionally, the evidence is not believed to show a determination based on the updating history of the user

Art Unit: 2432

apparatus, port access information of the user terminal, or programs and/or scripts downloaded and/or executable at the user terminal.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Herrmann, U.S. Publication No. 2003/0055994. Referring to claims 1, 5, 9, 13, 19, 21, 23, Herrmann discloses providing anti-virus cooperative enforcement wherein network access is permitted/denied based upon whether the client computer virus definition files are updated ([0050]), which meets the limitation of a security management device, an apparatus for a user and a security setting guide device in communication via a network, security detection unit detecting a security level of a user application based upon a record of updating a virus definition file of the user apparatus, a judging unit judging whether the security level of the user apparatus reaches a predetermined security level, and an access control unit, in case the judging unit judges the security level of the user apparatus does not reach the predetermined security level, restricting an access permission, the user apparatus is established to afford the network.

Referring to claims 2, 6, 10, 20, 22, 24, Herrmann discloses that if the client computer is determined to be complaint, the client is permitted access to the network ([0050]), which meets the limitation of the access control unit, in case the judging unit judges that the security level of

Art Unit: 2432

the user apparatus reaches the predetermined level, sets a range wider than the restriction range as the access permission range of the user apparatus, in case the judging unit judges that the security level of the user apparatus has reached the predetermined security level, does not restrict the access permission range on the network by the user apparatus.

Referring to claims 3-4, 7-8, 11-12, 14, Herrmann discloses that if the client computer is determined to be non-compliant, a sandbox server can provide access to the required anti-virus updates or information about where such updates may be obtained ([0051]), which meets the limitation of the access control unit has a function of controlling a communication route of the user apparatus and, in case the judging unit judges that the security level of the user apparatus does not reach the predetermined level, controls a communication destination of the user apparatus to a specified device in the restriction range on the network, the specified device controls updating the virus definition file of the user apparatus, in case the judging unit judges the security level of the user apparatus does not reach the predetermined security level, connects the user apparatus to the security setting guide device.

Referring to claims 15-16, 18, 25, 27, Herrmann discloses providing anti-virus cooperative enforcement wherein network access is permitted/denied based upon whether the client computer virus definition files are updated ([0050]), which meets the limitation of determining a security level of a user terminal upon a network access for the user terminal, base upon security information updating history of the user apparatus, and ensuring a predetermined security level on the network, according to the determined security level of the user terminal, the security information comprises a virus definition file and the security information updating history of the user terminal comprises an access pattern to a security information server for

updating security information and/or an access history to the security information for updating the security information, if the security level of the user terminal does not reach the predetermined security level, restricting an access permission range on the network of the user terminal, the user apparatus is established to afford the network.

Referring to claim 17, Herrmann discloses that if the client computer is determined to be non-compliant, a sandbox server can provide access to the required anti-virus updates or information about where such updates may be obtained ([0051]), which meets the limitation of the ensuring of the predetermined security level on the network comprises guiding the user terminal to meet the predetermined security level.

Referring to claim 26, Herrmann discloses that if the client computer is determined to be complaint, the client is permitted access to the network ([0050]), which meets the limitation of in case the judging unit judges that the security level of the user apparatus has reached the predetermined security level, does not restrict the access permission range on the network by the user apparatus.

6. Claims 1-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Sobel, U.S. Publication No. 2004/0103310. Referring to claims 1, 5, 9, 13, 19, 21, 23, Sobel discloses a network compliance enforcement system wherein clients are denied network access unless they are considered complaint with network security policies, which includes up to date virus definitions ([0014]), which meets the limitation of a security detection unit detecting a security level of a user apparatus, based upon a record of updating a virus definition file of the user apparatus, a judging unit judging whether the security level of the user apparatus reaches a predetermined security level, and an access control unit, in case the judging unit judges the

Art Unit: 2432

security level of the user apparatus does not reach the predetermined security level, restricting an access permission range on a network by the user apparatus, the user apparatus is established to afford the network.

Referring to claims 2, 3, 6, 7, 10, 11, 20, 22, 24, Sobel discloses that network access is denied until the client is compliant with network security policies ([0024]), which meets the limitation of the access control unit, in case the judging unit judges that the security level of the user apparatus reaches the predetermined level, sets a range wider than the restriction range as the access permission range of the user apparatus, the access control unit has a function of controlling a communication route of the user apparatus and, in case the judging unit judges that the security level of the user apparatus does not reach the predetermined level, controls a communication destination of the user apparatus to a specified device in the restriction range on the network, in the case when it is judged that the security level of the user apparatus has reached the predetermined security level, the access permission range on the network by the user apparatus is not restricted.

Referring to claims 4, 8, 12, 14, Sobel discloses that a non-compliant client is updated so that it will be considered compliant ([0019]), which meets the limitation of the specified device controls updating the virus definition file of the user apparatus, in case the judging unit judges the security level of the user apparatus does not reach the predetermined security level, connects the user apparatus to the security setting guide device.

Referring to claims 15, 16, 25, 27, Sobel discloses a network compliance enforcement system wherein clients are denied network access unless they are considered complaint with network security policies, which includes up to date virus definitions ([0014]), which meets the

Art Unit: 2432

limitation of determining a security level of a user terminal upon a network access for the user terminal, based upon security information updating history of the user apparatus, the security information comprises a virus definition file and the security information updating history of the user terminal comprises an access history to the security information server for updating the security information, the user apparatus is established to afford the network.

Referring to claim 17, Sobel discloses that a non-compliant client is updated so that it will be considered compliant ([0019]), which meets the limitation of the ensuring of the predetermined security level on the network comprises guiding the user terminal to meet the predetermined security level.

Referring to claims 18, 26, Sobel discloses that network access is denied until the client is compliant with network security policies ([0024]), which meets the limitation of the ensuring of the predetermined security level on the network comprises if the security level of the user terminal does not reach the predetermined security level, restricting an access permission range on the network of the user terminal, when determined by the ensuring that the security level of the user apparatus has reached the predetermined security level, does not restrict an access permission range on the network by the user apparatus.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENJAMIN E. LANIER whose telephone number is (571)272-3805. The examiner can normally be reached on M-Th 7:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Benjamin E Lanier/
Primary Examiner, Art Unit 2432